CARLTON FIELDS
ATTORNEYS AT LAW

SKY DOCKET

Published by The Aviation Practice Group of Carlton Fields

Summer 2004

A review of recent U.S. airline liability court activity

Inside This Issue:

TWO U.S. APPEALS COURTS REJECT WARSAW CONVENTION CLAIMS FOR EMOTIONAL DISTRESS NOT CAUSED BY BODILY INJURIES

Two federal appellate courts, in separate opinions, ruled that international air passengers bringing claims under the Warsaw Convention and IATA Intercarrier Agreement on Passenger Liability may not recover damages for emotional distress that was not caused by a physical bodily injury. Both the Second Circuit (New York) and the Third Circuit (Philadelphia) decided those mental injuries are not compensable under the treaty.

The Second Circuit, in *Ehrlich v. American Airlines* (March 8, 2004), affirmed a partial summary judgment for the carrier. The plaintiffs, a couple traveling from Baltimore to London via New York in 1999, were passengers on an aircraft that overshot the runway while landing at JFK. The aircraft was abruptly stopped by an arrestor bed before the plane would otherwise have plunged into the waters of a nearby bay. They evacuated by jumping from the aircraft doorway six to eight feet.

The plaintiffs claimed they sustained both physical and mental injuries. Physical injuries included injuries to the knee, neck, back, shoulder and hips and one plaintiff developed hypertension and a heart problem. Mental injuries included fear of flying, nightmares and difficulty sleeping. Their position was that damages for mental injuries were compensable as long as they were accompanied by some physical injury, regardless of whether the two distinct types of injuries shared a causal relationship, that is, even if the mental injuries they were claiming did not flow from the bodily injuries.

The Second Circuit, in a detailed opinion, ruled that Warsaw Convention passengers may bring an action against air carriers to recover for their mental injuries but only to the extent that they flow from bodily injuries. It is insufficient that the mental injuries are merely accompanied by physical injuries. The mental injuries must be caused by the physical injuries. The *Ehrlich* opinion is available to download at www.ca2.uscourts.gov.

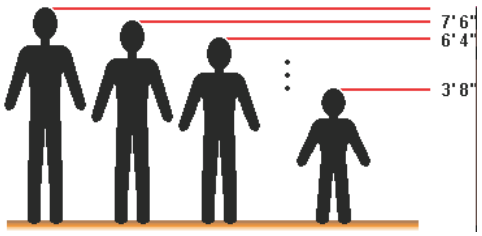
continued on page 2

continued from page 1

The Third Circuit Court of Appeals weighed in on the subject of damages for mental distress under the Warsaw Convention in *Bobian v. Czech Airlines* (March 26, 2004) shortly after the Second Circuit's *Ehrlich* decision. The Third Circuit affirmed a partial summary judgment for the carrier and against 28 passengers. The plaintiff passengers claimed they were injured on an international flight from Prague to Newark, New Jersey when the aircraft they were on flew into Hurricane Floyd in 1999, subjecting them to 45 minutes of "physical battery and sheer terror of almost certain death."

The plaintiffs claimed that their physical injuries consisted of post-traumatic stress disorder ("PTSD") which they maintained was "physically based in the neurochemical and neurologic reactions in critical brain areas dedicated to emotional control and regulation." They explained that persons who have PTSD actually suffered physical injury and damage to the brain due to biochemical releases during times of extreme stress that killed cells in the brain.

The Third Circuit rejected that argument, holding that a "palpable and conspicuous physical injury" is required under the treaty. The Court also commented that no plaintiff brought forward "cognizable evidence that his or her brain has changed physically from an earlier state." The *Bobian* decision is available from the Third Circuit's website at www.ca3.uscourts.gov.



CALIFORNIA COURT: STATE LAW DOES NOT REQUIRE AIRLINES TO PROVIDE PREFERENTIAL SEATING TO TALL PEOPLE

A California appeals court in *Tall Club of Silicon Valley v. Alaska Airlines* (February 27, 2004) declined to permit a lawsuit under state law brought by a social club for tall people against 12 airlines. The club alleged that the airlines were guilty of unlawful and unfair business practices by failing to provide seats with extra legroom to tall people. Plaintiff sought an order requiring the airlines to provide preferential seating to tall people (either six feet two inches tall or having a buttock to knee measurement greater than 95% of the U.S. population) in exit rows and other seats with greater legroom, to relieve the discomfort of cramped coach seating.

The appeals court affirmed a decision by the trial court to abstain from hearing the case. Instead, the court ruled, the proper forum for plaintiff's grievance was the U.S. Department of Transportation ("DOT"). The DOT reviewed a petition filed by the club and rejected the request for an injunction that required air carriers to provide special seating for tall people on request. The DOT explained that existing regulations do not provide preferential seating to the vast majority of disabled persons "who might, like [appellant's] members, simply be more comfortable if they were provided more legroom."

The DOT also cited the "potentially devastating economic impacts upon a struggling airline industry." The proposed rule would involve much more than just airlines reconfiguring the seats on their aircraft. Changes would also have to be made to their computer reservations systems; personnel would have to be trained in compliance procedures. The "concomitant loss of the good will of other groups who perceive themselves as equally needy of more room and for whom access to the most desirable seats would be greatly curtailed, would be considerable" the DOT ruled.

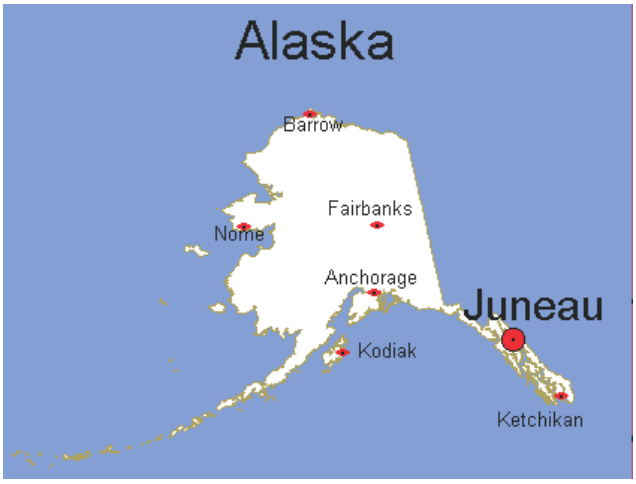
SUPREME COURT OF ALASKA REFUSES PASSENGER'S DEMAND FOR $9.00 REFUND

The Supreme Court of Alaska rejected a host of claims brought by an Alaska Airlines customer, who, among other things, demanded a $9.00 credit for a ticket he purchased on the airline's website in *Hallam v. Alaska Airlines, Inc.* (May 21, 2004).

Plaintiff, Hallam, claimed that he purchased from the airline's website a ticket labeled "unrestricted" that turned out to be restricted. Believing that he could change the ticket without incurring a fee, he attempted to change his travel dates, but was told that he would be charged. The fee was later waived, but Hallam chose not to use the ticket. In the second incident, Hallam bought a ticket to fly to Puerto Vallarta. Two charges, for differing amounts, appeared on his credit card bills. The greater of the two charges was credited back to him. Later, Hallam was informed that the charge was being reinstated, but that he could continue to contest it.

In the third incident, Hallam attempted to use a Permanent Fund Dividend (PFD) voucher to purchase a ticket to fly from Seattle to Juneau. At the Seattle airport, Hallam was informed that his voucher had expired and that he would have to purchase his ticket some other way. Fourth, Hallam claimed that he was denied a first class seat for which he had a reserved ticket. He therefore chose not to take the flight; he claimed that the denial of the first class seat was a breach. Finally, Hallam purchased a pair of tickets from the airline's website. He claimed that he was charged an amount much greater than what appeared on the screen, and called the airline to complain. The airline refunded all but nine dollars of the alleged overcharge.

The Supreme Court of Alaska held that: 1) Because Hallam offered no documentation of any failed attempts to change his unrestricted ticket without a fee, and because the trial judge found his testimony that the airline demanded a change fee was not credible, the finding by the trial judge that there was no breach of contract was not clearly erroneous; 2) There was no breach of contract concerning the Puerto Vallarta ticket because Hallam's credit card was credited the greater $190.32 charge after he disputed it and there was no evidence the charge ever was reinstated; 3) The Seattle - Juneau ticket had expired and Hallam failed to prove that it was more likely than not that he had purchased a ticket for travel on the date in question; 4) Hallam failed to prove it was more likely than not that he was ever promised a First Class seat on the flight in question; 5) Hallam was not entitled to a $9.00 refund for the ticket he purchased from the airline's website because



he failed to present documentation of any ticket(s) or ticket confirmation of any travel reserved or purchased at the alleged fare of $180; 6) Hallam's challenge of the airline's policy of classifying tickets as refundable or non-refundable and its policy of overbooking flights, and his challenge of the terms included in all tickets, relating to timetables, routes, departure and arrival times, and fares, was preempted by the Airline Deregulation Act; and 7) Hallam's antitrust claims (the airline attempted to contract, conspire, and combine with other airlines to monopolize air travel in the region) also were preempted by the Airline Deregulation Act.

NO PRIVATE RIGHT OF ACTION FOR PASSENGER UNDER AIR CARRIER ACCESS ACT TO REQUIRE AIRLINE TO PROVIDE MEDICAL OXYGEN

The U.S. Tenth Circuit Court of Appeals (Denver) ruled that passengers do not have a private right of action to sue airlines under the Air Carrier Access Act ("ACAA") in *Boswell v. Skywest Airlines, Inc.* (March 15, 2004). The plaintiff passenger had a lung disease that affected her breathing. Her physician prescribed medical oxygen. For a few months she was able to breathe for an hour or two at a time without supplemental oxygen, but then her physician advised her to use oxygen continuously.

As a member of the Utah State Advisory Council for the Division of Services for the Blind and Visually Impaired, the passenger was required to fly the defendant air carrier's route between St. George, Utah and Salt Lake City. The plaintiff passenger requested that the carrier provide medical oxygen during the flights, but the carrier refused. The plaintiff maintained she then had to surrender her board position.

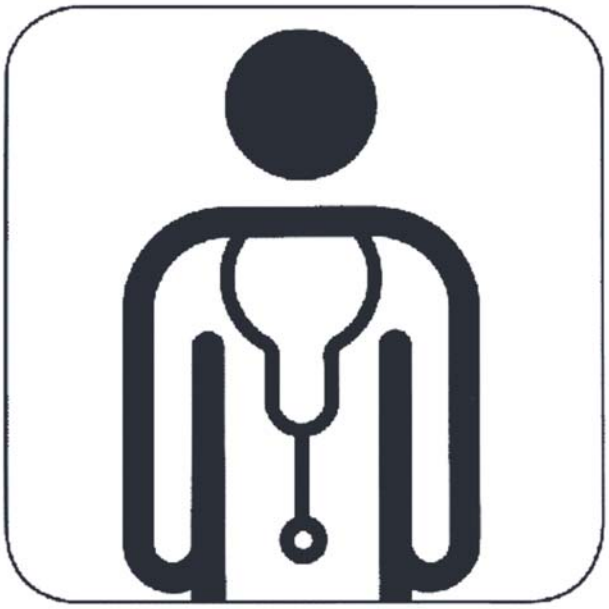
She then filed her lawsuit to require the carrier to provide her with medical oxygen unless it could show that the provision of oxygen would constitute an undue burden or would fundamentally alter its operation. The carrier filed a motion for summary judgment and argued that ACAA and accompanying regulations vest airlines with discretion to provide medical oxygen to passengers but do not require them to do so absent a showing of undue hardship. The district court granted the carrier's motion, ruling that the issues plaintiff raised were better addressed by regulatory agencies than by judicial interpretation of vague regulatory provisions.

The Tenth Circuit affirmed but on different grounds. It ruled that ACAA did not allow a private right of action for aggrieved passengers. A passenger's remedy was to make a written complaint to the Secretary of Transportation. The Court said: "Like the district court, we are sympathetic to Ms. Boswell's difficulties. The claim she asserts here presents a difficult question of balancing her right to be free from discrimination with Skywest's safety concerns about providing oxygen to passengers. However, this difficult question must be resolved by the means provided by the statute."

ALL DEATH AND INJURY CLAIMS ARISING FROM SINGAPORE AIRLINES OCTOBER 2000 CRASH IN TAIPEI, TAIWAN DISMISSED BY ILLINOIS COURT

An Illinois state judge dismissed all claims brought by Taiwanese citizens for wrongful death and personal injury arising from the October 31, 200 crash of Singapore Airlines Flight SQ006 in Taipei, Taiwan. The Taipei to Los Angeles flight crashed on take-off when it struck equipment on the runway, broke apart and burst into flames. In *Sun v. Singapore Airlines,* Ltd. (March 19, 2004), the judge granted the airline's motion to dismiss based on the doctrine of forum non conveniens.

The judge agreed with the airline that the facts strongly favored dismissal. The statutes and laws governing a Taiwan court would provide a sufficient alternative forum convenient to all parties to the litigation. Most of the evidence was located or would come from Taiwan or Singapore, including witnesses on damages and liability. The aircraft was still in Taiwan. The Illinois court could exercise no jurisdiction or compulsory process over those witnesses to compel their attendance. There were no American plaintiffs.



ONBOARD PHYSICIAN'S TREATMENT OF PASSENGER FOR ALLERGIC REACTION TO FISH NOT AN "ACCIDENT" UNDER WARSAW CONVENTION

A federal judge in New York, in *Horvath v. Deutsche Lufthansa*, AG (March 11, 2004), ruled that the administration of a medical drug to an international air passenger by another passenger who was a physician was not an accident under the Warsaw Convention. The plaintiff, traveling from Frankfurt to New York, was allergic to fish. She was served a tray of food, but she ate strips of salmon in a side salad, thinking they were tomatoes. She suffered an allergic reaction. Another passenger, who was a physician, was given the aircraft's medical kit and gave her medical attention. The passenger-physician administered a drug from the medical kit that allegedly aggravated the passenger's condition. The plaintiffs admitted that the doctor who administered the drug acted within the best tradition of his profession.

The Court therefore ruled that there was no "accident" under the Warsaw Convention: "Although, under certain circumstances, an airline's response to and treatment (or lack thereof) of a passenger's inflight emergency may constitute an accident …, as may an air carrier's facilitation of a tort by a fellow passenger, …where plaintiffs have acknowledged that the treatment provided to Ms. Horvath was 'proper' and 'entirely within the best tradition of [the medical] profession,' it cannot be said that the administration of 'Tiaphlin' or any other drug to a passenger who was, by her own description, experiencing an allergic reaction was a separate and independent 'accident', i.e. 'an unusual or unexpected event external to the passenger'… In short, without a claim that defendant departed from ordinary procedures with respect to Mr. Horvath's treatment, or that Ms. Horvath's treatment was carried out in a way 'that was not expected, usual, normal or routine,' …, and, in light of plaintiffs' admissions to the contrary, no reasonable jury could conclude the administration of a drug by a physician passenger constituted an 'accident' under the Warsaw Convention."

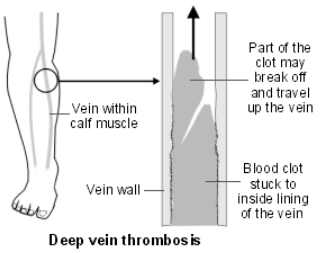
CARLTON FIELDS OFFERS SEMINARS

The Aviation Practice Group of Carlton Fields offers in-house seminars on a variety of subjects of interest to aviation liability professionals. The most popular current topics include The Montreal Convention of 1999 and the "Warsaw System"; denied passenger boarding/passenger ejectment; defending turbulence claims; and evaluating and settling wrongful death claims for catastrophic losses. Continuing insurance and/or legal education credits ordinarily are available. To request an in-house seminar, please call (800) 486-0146, extension 6231 or e-mail: eschwartzman@carltonfields.com.

FIFTH CIRCUIT: PASSENGER'S STATE LAW DVT CLAIM PREEMPTED BY AIRLINE DEREGULATION ACT AND FEDERAL AVIATION ACT

The U.S. Fifth Circuit Court of Appeals (New Orleans), in *Witty v. Delta Air Lines* (April 13, 2004), held that a passenger's state law claim that he developed deep vein thrombosis ("DVT") was preempted by federal law. The plaintiff claimed he developed DVT on a flight from Monroe, Louisiana to Hartford, Connecticut. He alleged that Delta was negligent in failing to warn passengers about the risks of DVT, failing to provide adequate legroom to prevent DVT and failing to allow passengers to exercise their legs.

The Fifth Circuit held that pursuant to the Federal Aviation Act any failure to warn claim, at a minimum, must be based on federally mandated warnings, but that in this case federal regulations did not require warnings to passengers about the risks or methods for preventing this condition. Accordingly the airline cannot be held liable for failing to provide warnings or instructions to plaintiff. (The Court construed the failure to allow passengers to exercise to be a failure to instruct claim which also would be preempted by the Federal Aviation Act.) Likewise, the Airline Deregulation Act preempted the leg room claim.



Deep vein thrombosis

The *Witty* court explained: "Allowing courts and juries to decide under state law that warnings should be given in addition to those required by the Federal Aviation Administration would necessarily conflict with the federal regulations. In this case, the conflict is more than theoretical, since Witty claims that a DVT warning should have been given, while federal regulations do not require such a warning. And any warning that passengers should not stay in their seats, but instead should move about to prevent DVT, would necessarily conflict with any federal determination that, all things considered, passengers are safer in their seats." The opinion is available to download at www.ca5.uscourts.gov/opinions/.

CALIFORNIA APPEALS COURT REINSTATES CLAIM AGAINST AIRLINE FOR FAILURE TO RENDER MEDICAL ASSISTANCE

A California appellate court reinstated a passenger's negligence/personal injury/discrimination claim against an airline in *Swilley v. Southwest Airlines Co.* (February 27, 2004). She had alleged that during a flight from Los Angeles to St. Louis she fell asleep and was awakened by pain in her chest and legs. She advised a flight attendant that she had sickle cell anemia and acute bronchitis and was in need of oxygen. The flight attendant directed plaintiff to lie down on seats in the back of the aircraft, but did not provide plaintiff with oxygen and did not call MEDLINK - described by plaintiff as a group of physicians which relays medical advice and helps [defendant's employees] determine when medical intervention is necessary.

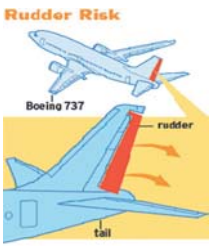
The trial judge dismissed the complaint ruling there was no basis on which plaintiff legally could set forth a cause of action against the airline, and later denied a motion for reconsideration. Attached to plaintiff's motion for reconsideration was a letter to plaintiff from the airline that explained the circumstances under which oxygen on board the aircraft would be used in the case of a medical emergency after contacting MEDLINK, but acknowledged: "Unfortunately, we do not have a report of this process taking place on your flight and have no further information to offer."

The appellate court reversed, finding that plaintiff could allege facts in an amended pleading from which it could be inferred that the airline's failure to follow its procedures and provide plaintiff with medical assistance during the flight caused her condition to worsen. As a result, she was later required to seek emergency medical treatment.

AIRLINES NOT LIABLE TO PORT AUTHORITY POLICE OFFICER INJURED BY CHEMICALS IN SUITCASE ON BAGGAGE CAROUSEL

The U.S. Second Circuit Court of Appeals affirmed the dismissal of an injury claim brought by a New York Port Authority police officer in *Di Benedetto v. Pan Am World Service, Inc.* (February 27, 2004). In 1990 a Russian laser scientist boarded an Aeroflot flight from Moscow to JFK Airport in New York. In his checked luggage was a bag containing unlabelled and unreported chemicals. At some point the bag in question was transferred to another Aeroflot flight, and ended up on a baggage carousel at JFK. The plaintiff police officer responded to a report that there was an unclaimed bag emitting smoke on a Pan Am baggage carousel. He opened the bag and plumes of smoke emerged, allegedly causing him serious injury.

The Second Circuit affirmed summary judgments for Aeroflot and Pan Am and held: "Given the conceded facts - the time and circumstances - of Shklovsky's flight, no jury could have properly found that a reasonable airline (here, Aeroflot) would have x-rayed or hand-searched every checked bag on every one of its flights, as would have been necessary to find the chemicals in question. Nor can it be claimed that it was unreasonable for Pan Am … to have failed to x-ray or search every bag before it was placed on Pan Am's baggage carousel."



TEN YEARS AGO: USAIR BOEING 737 CRASHES NEAR PITTSBURGH

Ten years ago, on September 8, 1994, USAir Flight 427, a Boeing 737-3B7, crashed near Aliquippa, Pennsylvania, with 132 fatalities. The aircraft, on a flight from Chicago's O'Hare International Airport, was approaching runway 28R at Pittsburgh when Air Traffic Control reported traffic in the area, which was confirmed in sight by the first officer. At that moment, the aircraft was leveling off at 6000ft and rolling out of a 15° left turn with flaps at 1°, the gear still retracted, an indicated airspeed of 190 knots, and autopilot and auto-throttle systems engaged. The aircraft then suddenly entered the wake vortex of a Delta Airlines Boeing 727 which had preceded it by approximately 69 seconds. Over the next 3 seconds, the aircraft rolled left to approximately 18° of bank. The autopilot attempted to initiate a roll back to the right as the aircraft went in and out of a wake vortex core, resulting in two loud "thumps." The first officer then manually overrode the autopilot without disengaging it by putting in a large right-wheel command at a rate of 150°/sec. The airplane started rolling back to the right at an acceleration that peaked 36°/sec, but the aircraft never reached a wings level attitude.

At 19.03:01 the aircraft's heading slewed suddenly and dramatically to the left (full left rudder deflection). Within a second of the yaw onset the roll attitude suddenly began to increase to the left, reaching 30°. The aircraft pitched down, continuing to roll through 55° left bank. At 19.03:07 the pitch attitude approached -20°, the left bank increased to 70° and the descent rate reached 3600 ft/min. At this point, the aircraft stalled. Left roll and yaw continued, and the aircraft rolled through inverted flight as the nose reached 90° down, approx. 3600 feet above the ground. The 737 continued to roll, but the nose began to rise. At 2000 feet above the ground the aircraft's attitude passed 40° nose low and 15° left bank. The left roll hesitated briefly, but continued and the nose again dropped. The plane descended fast and impacted the ground nose first at 261 knots in an 80° nose down, 60° left bank attitude and with significant sideslip.

PROBABLE CAUSE: "The National Transportation Safety Board determines that the probable cause of the USAir flight 427 accident was a loss of control of the airplane resulting from the movement of the rudder surface to its blow down limit. The rudder surface most likely deflected in a direction opposite to that commanded by the pilots as a result of a jam of the main rudder power control unit servo valve secondary slide to the servo valve housing offset from its neutral position and over travel of the primary slide."

PASSENGER'S CLAIM AGAINST AIRLINE ALLOWED TO PROCEED AFTER SHE WAS ARRESTED FOR STATING THE WORD "BOMB" AT THE FIRST CLASS CHECK-IN COUNTER

An Illinois federal judge allowed to go forward a state law tort claim against an airline that was brought by a passenger on an international flight who was arrested for uttering the word "bomb" in *Hansen v. Delta Air Lines* (March 17, 2004). Plaintiff and her husband had tickets to fly from Chicago to Manchester, England. They approached the carrier's first class ticket counter at Chicago's O'Hare Airport. They were presented with boarding passes and plaintiff claimed they fully cooperated with the carrier's agent. They then left the counter. Plaintiff claimed that an employee of the carrier told authorities she had uttered the word "bomb" (which she denied). An airline employee then signed a complaint accusing plaintiff of the offense of disorderly conduct - saying she stated the word "bomb" during a conversation with that employee as the employee asked a security question. "This action put people in the area in fear for their safety" the employee said in the complaint.

According to plaintiff's complaint, when plaintiff and her husband reached the "boarding line for flight 555", two uniformed Chicago Police Department officers detained plaintiff. She was handcuffed and escorted to a police van. At the police station, a Chicago police officer performed a body search of plaintiff, handcuffed her to a jail cell, photographed and fingerprinted her. Plaintiff was released on bail the next day. Two months later, at a criminal hearing, all charges against plaintiff were dropped due to lack of prosecution. She then sued the airline for false imprisonment, malicious prosecution and intentional infliction of emotional distress under state law.

The carrier moved to dismiss arguing the claims were preempted by the Warsaw Convention and the air carrier immunity provisions of the Aviation and Transportation Security Act and Federal Aviation Act. The Court declined to dismiss based on preemption by the Warsaw Convention because there was a fact issue whether plaintiff was in the course of any of the operations of embarking or disembarking on an international flight as required by Article 17 of the treaty. The complaint did not indicate whether plaintiff was inside the airline's gate area. In fact, it did not indicate at all where she was arrested nor did it indicate whether her actions at the time of her arrest were solely related to the act of boarding. Receiving a boarding pass alone is not sufficiently connected to actual boarding of the plane to constitute embarking. The complaint also did not describe the extent of the carrier's control over plaintiff at the time of her arrest.

The Court also refused to dismiss on authority of "air carrier immunity". Plaintiff argued there was no immunity for the conduct of the employee who reported her to the authorities because the employee's statement was knowingly false. The Court agreed because plaintiff denied making the "bomb" remark in her complaint. Moreover, because plaintiff denied making the remark, the pleadings did not demonstrate that the airline employee had a good faith belief that plaintiff presented a security threat.

CARLTON FIELDS LISTED IN SECOND ANNUAL CHAMBERS USA GUIDE

Carlton Fields is again listed by Chambers USA in the second annual *Chambers USA: A Guide to America's Leading Business Lawyers*. Nine of the firm's practice areas and fifteen of its attorneys rank among the top in Florida.

The firm's Construction practice ranked #1 in Florida for the second year; Antitrust ranked #2 for the second year; Insurance ranked #2 for the second year; Bankruptcy rose to #2 this year; Real Estate rose to #3 this year; and Tax rose to #3 this year. New practices added to the rankings this year include the firm's Corporate/M&A group (#4); the Employment practice (#4); and Litigation practice (#4).

Chambers and Partners is the renowned London-based publisher of *Chambers Global* and *Chambers UK Leading Lawyers*. Chambers investigated the top firms and lawyers in each U.S. state in over 20 commercial areas of law, resulting in the second U.S. edition and the only legal directory to rank law firms and individual attorneys. Chambers USA rankings and additional comments on the firm's practice areas and attorneys are at www.chambersandpartners.com.

NINTH CIRCUIT: NO JURISDICTION FOR U.S. COURTS TO CONSIDER DEATH CLAIMS FROM 1997 INDONESIAN AIR DISASTER

Garuda Indonesia Airlines flight 152, on a domestic flight from Jakarta to Medan, Indonesia, while flying through smoke generated by regional forest fires, dropped well below normal altitude on its approach to Medan on September 26, 1997. The Airbus A300 crashed into the side of a mountain killing all 232 passengers and crew on board, including passengers Fritz and Djoeminah Baden, residents of Lake Oswego, Oregon. One of their children filed a Warsaw Convention death claim in federal court in Oregon. The U.S. Ninth Circuit Court of Appeals (San Francisco), in *Coyle v. P.T. Garuda Indonesia* (April 12, 2004) ruled that the flight was a purely domestic side-trip and not part of a three and a half week international itinerary that commenced in Portland, Oregon with intermediate stops in Seattle, Taipei, Jakarta and Singapore before returning to Portland. The tickets designated the origin and destination of the trip as round trip from Jakarta to Medan with an open return date. They did not refer to any other tickets, or to a larger flight itinerary. They did not include a reference number, symbol or other manifestation denoting a connection to further travel. The tickets were clearly labeled "DOMESTIK" and were purchased two months after the purchase of the Badens' international itinerary. They were purchased in Indonesia and paid for with Indonesian currency.

Those facts led the Court to conclude that the intent of the parties was that the voyage on Flight 152 was not connected or successive to the Badens' earlier scheduled international travel. The "final destination" of the Jakarta - Medan roundtrip was Jakarta, not Portland, and therefore the trip was not governed by the Warsaw Convention. Because the trip was not governed by the Warsaw Convention, U.S. courts lacked subject matter jurisdiction. The airline enjoyed immunity from suit under the Foreign Sovereign Immunities Act unless it waived that immunity by virtue of its U.S. Department of Transportation foreign air carrier permit. That permit provided that the airline waived immunity with respect to proceedings instituted against it in U.S. courts "[b]ased upon any claim under any international agreement or treaty …" The Warsaw Convention did not govern this claim, and, therefore, the carrier was immune from suit in U.S. courts. The detailed opinion may be downloaded at www.ca9.uscourts.gov.

CARLTON FIELDS RANKED AMONG TOP 50 IN NATION IN MINORITY LAW JOURNAL'S DIVERSITY ISSUE

Carlton Fields ranked among the top 50 law firms in the nation in the *Minority Law Journal*'s annual issue on diversity. In addition, the firm ranked #3 in the nation for the percentage of Hispanic Americans at the firm. The publication's "Diversity Scorecard" is drawn from statistics collected by *The National Law Journal* as part of its annual census of the 250 largest law firms in the country.

"Carlton Fields is committed to recruiting and hiring minorities at every opportunity. We believe that persons with diverse backgrounds enhance and enrich the firm's work environment, and add immeasurable value to the legal services that we provide and the overall culture of the Firm," remarked **Jason M. Murray**, Chair of the firm's Diversity Committee.

Carlton Fields' Diversity Program was created to further the firm's efforts to increase representation of minority lawyers in the firm, develop policies and practices that define and transmit the firm's commitment to diversity, and establish accountability standards and measure progress.

CARLTON FIELDS WEB SITE LAUDED AS "NEXT GENERATION"

Carlton Fields has been honored with a Silver award in the IMA's (Internet Marketing Attorney) 2004-05 web site ratings and review of the 250 largest law firms in the United States. The independent survey of law firm web sites is conducted by InternetMarketingAttorney.com and is based on five criteria: design, content, usability, interactivity, and intangibles. The top 30 highest-scoring firms receive awards in excellence for their web sites. IMA complimented Carlton Fields' web site as "a good lesson for those trying to get a web site to the 'next-generation' of layout and dissemination of information."

CARLTON FIELDS RELOCATES TAMPA OFFICE TO WESTSHORE BUSINESS DISTRICT

The Tampa office of Carlton Fields, P.A. relocated to Corporate Center III at International Plaza in the Westshore Business District, on June 28, 2004. Carlton Fields now occupies 88,000 square-feet of the new, class A building on the eighth, ninth, and tenth floors. The new office address is Corporate Center Three at International Plaza, 4221 West Boy Scout Boulevard, Tampa, Florida, 33607. The telephone number remains 813.223.7000.

"The new Tampa office is designed to meet the legal and business needs of our clients," said **Thomas A. Snow**, President and CEO of the firm. "The building's updated technology and wireless connectivity will enable firm employees to be more productive for our clients and offers added convenience to visiting clients and guests. Our proximity to the airport also provides ease of access to the office for our clients." "The concept that major law firms need to be downtown near the courthouse is outdated," said Snow. "Frankly, our attorneys are as likely to be going to a courthouse or client office in another part of the state or nation as to downtown Tampa."

"The new building will enable us to use the latest technology and allow our attorneys to be more productive in serving our clients' needs," said **Luis Prats**, managing shareholder of Carlton Fields' Tampa office. The new building's state-of-the-art technical infrastructure was also crucial to Carlton Fields' decision to relocate to Westshore. Corporate Center III contains a high-speed, high-capacity network with redundant systems to eliminate loss of service.

The Tampa office of Carlton Fields opened in 1901 and continues its strategic growth, with more than 80 attorneys practicing in over 30 areas of law.

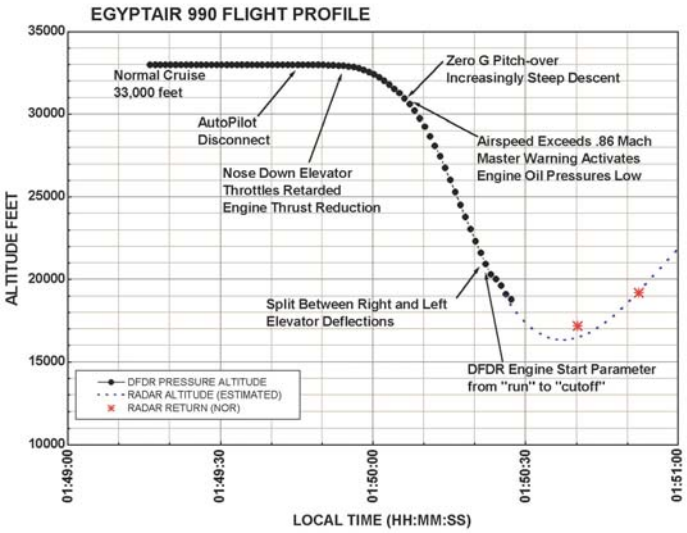
EGYPTAIR FLIGHT 990 JUDGE AWARDS $1.52 MILLION AND $1.2 MILLION FOR DEATHS OF TWO COUPLES

A New York federal judge, in *In re Air Crash Near Nantucket Island, Massachusetts*, on *October 31, 1999* (March 9, 2004), awarded damages to the surviving family members of two couples who perished in the 1999 crash of EgyptAir Flight 990 into the Atlantic Ocean 60 miles from Nantucket Island. Flight 990 was scheduled to travel from New York's Kennedy International Airport to Cairo, Egypt but crashed in international waters after departing JFK. There were no survivors. In this Warsaw Convention accident, damages were awarded based on the Death on the High Seas Act (DOHSA). DOHSA only allowed recovery of pecuniary damages but it was amended after the crash to allow the recovery of non-pecuniary damages defined to be "damages for loss of care, comfort, and companionship."

Passengers Larry Kowalsy, 74, and Edith Kowalsky, 68, were survived by fours sons with ages of 46, 44, 41 and 33 at the time of the crash. They lived within four miles of their parents and saw them almost every week. Passengers Norman Shapiro, 70, and Joan Shapiro, 64, were survived by two sons and a daughter aged 40, 38 and 34. Norman Shapiro also was survived by elderly parents, but they both died within a year after the accident. Joan Shapiro's mother was a survivor as well but she died in 2002. Two of the Shapiro children lived with their parents. The judge observed that in both families there were frequent family get-togethers along with "the ubiquitous outpouring of love and affection" that flowed from the parents to their children. Accordingly, there was no rational basis to distinguish between each child's loss.

The Kowalsky survivors and the Shapiro survivors wanted total awards of $2.5 million for the death of each parent (equating to $625,000 per Kowalsky child and $833,333 per Shapiro child). EgyptAir argued for awards of $75,000 per child for each parent (equating to total damages of $600,000 for the Kowalsky family and $450,000 for the Shapiro family).

The judge awarded each Kowalsky child $180,000 for the death of their father and $200,000 each for the death of their mother (total award of $1.52 million). For the Shapiro children, each child was awarded $190,000 for the death of their father and



$210,000 for their mother (total damages for the Shapiro family was $1.2 million). In addition, the estates of the deceased parents of Norman Shapiro each were awarded $10,000. The estate of Joan Shapiro's mother was awarded $25,000.

In making the awards, the judge explained that the amounts varied due to differing life expectancies of the parents. The judge also took into account the heightened impact of the simultaneous loss of both parents in contrast to that of only one parent.

The Court also exercised its discretion to award prejudgment interest on the full amount of the awards from the date of the accident until October 27, 2000, when EgyptAir made advance payments to each family of $600,000. From that date forward to the date of judgment, prejudgment interest was to run on the balance of each award after taking into account the advance payments.

Upcoming Airline Liability Events

American Bar Association Tort Trial & Insurance Practice Section
Aviation and Space Law Committee
Aviation Litigation Meeting
October 2004 (date TBD)
Washington, D.C.
Contact: Debra D. Dotson (debradotson@staff.abanet.org) 312/988-5708

American Bar Association Forum on Air & Space Law
Fall Meeting and Conference
October 28 - 29, 2004
Santa Monica, California
www.abanet.org/forums/airspace/home.html

Aviation Insurance Association
2004 London Conference
November 4, 2004
London, England
www.aiaweb.org

Information

For more information about this issue of *Sky Docket*, to receive it via e-mail, or for information about Carlton Fields' Aviation Practice Group, contact Carlton Fields' Aviation Practice Group by **telephone:** (800) 486-0140, extension 6231 or (305) 539-7231; by **e-mail:** eschwartzman@carltonfields.com; by **mail:** 4000 International Place, 100 Southeast Second Street, Miami, Florida 33131; or visit Carlton Fields' interactive **web site** at www.carltonfields.com.

CARLTON FIELDS

ATTORNEYS AT LAW

Miami • Orlando • St. Petersburg • Tallahassee • Tampa • West Palm Beach